

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4450 of 1998

with

Civil Application No.5781 of 1998

with

Civil Application No.9654 of 1998

with

Special Criminal Application No.491 of 1998

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?-Yes.
2. To be referred to the Reporter or not?-Yes.
3. Whether Their Lordships wish to see the fair copy of the judgement?-No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No.
5. Whether it is to be circulated to the Civil Judge?-No.

SHIKSHAN BACHAO SAMITI

Versus

COMMISSIONER

Appearance:

1. Special Civil Application No.4450 of 1998 :-

MR Girish Patel, Senior Advocate,

for JOY MATHEW for Petitioner

MR M.D. Pandya, Advocate, for Respondent No. 1

MR AD OZA for Respondent No. 2

MR YF MEHTA for Respondent No. 3

MRS KETTY A MEHTA for Respondent No. 4
Mr.S.R. Divetia, AGP, for respondent No.5.
Mr.H.M. Mehta, Senior Advocate, for Mr.Ketan Dave,
for respondent No.6.
Mr.Mehul Vakharia, Advocate, for respondent No.7.

2. Civil Application No.5781 of 1998 :-
Mr.Y.F. Mehta, Advocate, for the Applicant.
MR Girish Patel, Senior Advocate,
for JOY MATHEW for the orig. Petitioner
MR M.D. Pandya, Advocate, for Opponent No. 1
MR AD OZA for Opponent No. 2
MRS KETTY A MEHTA for Respondent No. 3
Mr.S.R. Divetia, AGP, for respondent No.4.
3. Civil Application No.9654 of 1998
Mr.B.B. Oza, Advocate, for the Applicants.
MR Girish Patel, Senior Advocate,
for JOY MATHEW for the orig. Petitioner
MR M.D. Pandya, Advocate, for Respondent No. 1
MR AD OZA for Respondent No. 2
MR YF MEHTA for Respondent No. 3
MRS KETTY A MEHTA for Respondent No. 4
4. Special Criminal Application No.491 of 1998 :-
Mr.Y.F. Mehta, Advocate, for the Petitioners.
Mr.S.R. Divetia, AGP, for the respondents.

CORAM : CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE M.H.KADRI
Date of decision: 11/11/98

C.A.V. JUDGEMENT: (Per K.G. Balakrishnan, C.J.)

1. The petitioner is an unregistered Association, working in the field of education. It is alleged that very eminent persons are members of this Body. The petitioner-Association is taking several steps to spread the education among all sections of the society, especially the poor and deprived sections and is also taking steps to maintain and improve the standards of education. Municipal School No.20 at Mithakhali was established about 40 years back. At the relevant time, there were about 300 students in classes 1 to 7. The Ahmedabad Municipal Corporation decided to shift School No.20 to another building nearby. According to the petitioner, this is a colourable exercise of power and it is violative of the right to education of the students, who are studying in the school. The petitioner alleges that the Municipal Corporation is going to part with the school building, which is worth about three to four

crores of rupees, to the 4th respondent, which is a Private Trust. The petitioner challenges the shifting of the school on various grounds and it is prayed that the Corporation may be directed to suspend the decision to shift the present Municipal School No.20 to another building and that the Corporation may be directed to continue the Municipal School No.20 along with the students and teachers in the same building, which has been working since long and that the Corporation may be restrained from allowing the 4th respondent to occupy the land, building and premises of the Municipal School No.20 and that the Corporation may be directed to take back possession.

2. It is alleged that the decision of the Corporation to close Municipal School No.20 and to shift the same to another building and to start another educational institution from K.G. to 12th Standard is absolutely irrational, arbitrary and unreasonable and it is violative of Articles 14, 19(1) and 21 of the Constitution. It is alleged that the Corporation is bound to carry out the duties imposed under the Bombay Primary Education Act, 1947. The land, building and premises of the Municipal School No.20 vest in the Corporation as a Trustee of the residents of the people of Ahmedabad and the Corporation cannot create an independent Trust for the purpose of starting International Education and Research Foundation. It is submitted that the decision of the Corporation to lease the land, building and premises of the Municipal School No.20 for a token rent of Rs.101/- per year for a period of 30 years is illegal and arbitrary and is in clear violation of clause (d) of Section 79 of the Bombay Provincial Municipal Corporations Act. According to the petitioner, this amounts to privatisation of public resources and the Corporation has no authority to transfer the properties to a Private Trust. Therefore, it is prayed that the Corporation be restrained from handing over the property to the 4th respondent and the Municipal School No.20 be allowed to continue at the same premises.

3. On behalf of the 2nd respondent, an affidavit-in-reply is filed, wherein allegations contained in the Special Civil Application are denied. It is submitted that School No.20 is not closed. All the students, who are studying in School No.20 are shifted to School No.4. The Municipal School Board intends to start a school of international standard. School will be equipped with totally different methods of teaching, with the aid of a French organization. The 4th respondent,

Ideal Foundation, is going to bring in the infrastructure within a short time. The project will cater to the overall need in the field of education. The shifting of the school was challenged in Special Civil Application No.7527 of 1997 and a Commissioner was appointed to give a report regarding the feasibility of shifting the school to the new premises. Various orders were passed in that Special Civil Application, but no interim order was passed against the shifting. The present petition is another attempt to convert the same cause into "public interest litigation". Pursuant to the various interim orders passed in Special Civil Application No.7527 of 1997, the renovation work was carried out in School No.4 and every attempt was made by the Corporation to provide adequate facilities for the children so as to study in School No.4. 5 rooms, 6 urinals and 2 toilets were constructed additionally and underground and overhead water tanks will be constructed. Open plot situated 106 metres away is scheduled to be developed into park and play ground. It is submitted that the present education system needs radical change and with this intention, efforts are being made to persuade the 4th respondent to start the school.

4. The 4th respondent has also filed an affidavit-in-reply, denying the allegations contained in the Special Civil Application. It is contended that a school of international standard is going to be started and the Trustees of the 3rd respondent will fully look after the management and working of the international school and the school is governed by a Public Charitable Trust, registered under the Bombay Public Trusts Act and the Ideal Foundation has nothing to do with the collection of fees from the students and the school will work in the Gandhian line of breaking apartheid in education.

5. We heard the petitioner's counsel Shri Girish Patel, and Shri Harobhai Mehta, as well as Mr. M.D. Pandya, Advocate, Mr. Y.F. Mehta and Mrs. Ketty A. Mehta, for the respondents.

6. The primary education in the State of Gujarat is controlled and managed by the Local Bodies and the Bombay Primary Education Act, 1947 is the statute governing the field. In each District there will be a District School Board and for each Municipality, there is a Municipal School Board. Within the Ahmedabad Municipal Corporation, there are several primary schools and School No.20 at Mithakhali is one such Primary School, having classes from 1 to 7. In the year 1997, it was decided by

the Municipal School Board to shift School No.20 at Mithakhali to a nearby school, viz., School No.4. The building wherein School No.20 was housed was intended to be used for an international school with the help of a Public Charitable Trust. When the guardians of the children came to know of the shifting of School No.20, some of them jointly filed Special Civil Application No.7527 of 1997. They prayed for an interim order to restrain the Municipality from shifting the school, but the same was not granted by the learned single Judge, before whom the Special Civil Application came up for consideration. It seems the main allegation in that petition was that adequate facilities are not provided in School No.4 to cater to the needs of the entire students, including the students that may be shifted from School No.20. Various interim orders were passed by the learned single Judge and the respondent-Municipal Corporation was directed to carry out extensive repairs of the building of School No.4. In the affidavit filed by the Deputy Municipal Commissioner, the details of such works carried out by the Corporation are given. It is submitted that about Rs.10,35,760/- were spent by the Municipality for renovation of the building of School No.4. The said Special Civil Application was withdrawn by the petitioners.

7. The present Special Civil Application was filed as a Public Interest Litigation, contending that shifting of School No.20 to the building of School No.4 is virtually closure of School No.20 and violative of Articles 14 and 21 of the Constitution of India. It is submitted by the petitioners' counsel that it has been held by the Honourable Supreme Court in Unni Krishnan, J.P. and others v. State of Andhra Pradesh and others, (1993) 1 SCC 645, that right to education is a fundamental right and it is the duty of the governmental authority to provide basic education to the children and by shifting the school, the children are denied the privilege of getting education. It is true that by virtue of the provisions contained in the Bombay Primary Education Act, 1947 and also in view of Article 45 of the Constitution, it is the bounden duty of the Corporation to give adequate educational facilities to the children. The main question to be considered in this Special Civil Application is whether the shifting of School No.20 will jeopardize such rights of the children. The Corporation intended to start a school of international standard in the building, wherein School No.20 was housed and steps were taken in 1997 and from the documents produced in the case, it appears that the Corporation, with the help of respondents 3 and 4, wanted to start the international

school in the building of School No.20 on 2nd October, 1997, and the children studying in School No.20 were asked to vacate the school and join in School No.4. The various orders that are produced by the respondents themselves would go to show that adequate facilities were not provided in School No.4 to give proper education to children, who were shifted from School No.20. The learned single Judge had to pass series of orders, directing the Corporation to provide adequate facilities to the children. It is clear that the shifting of School No.20 was done in a haphazard manner and the children had to suffer serious injustice on account of the shifting. The Corporation so far has to spend more than Rs.10,00,000/- to provide the facilities to School No.4. There were no rooms to sit, no latrine, toilets or other facilities provided in School No.4. All these facilities have been provided by the Corporation pursuant to effective intervention by the Court. Without providing these facilities, Corporation wanted to start the international school in School No.20.

8. However, at the present juncture, we are not inclined to hold that the shifting of the children from School No.20 to School No.4 will adversely affect the interests of the students. When the children are provided reasonable facility of education, it cannot be said that there was denial of the constitutional right. It is important to note that the main contention urged in the Special Civil Application is against the shifting of children from School No.20 to School No.4. All the prayers in the Special Civil Application relate to the shifting of School No.20. In view of the changed circumstances, we do not find any force in the contention advanced by the petitioner that the shifting of the school is illegal or irrational or violative of Article 21 of the Constitution. It is also important to note that the petitioner-Committee must have been aware of the filing of Special Civil Application No.7527 of 1997. However, the petitioner-Committee had not chosen to intervene in that proceeding. The present petition is filed after several steps had been taken in the earlier Special Civil Application. The various orders passed by the learned single Judge in the earlier writ petition have been produced by the respondents and specific directions were given to the Corporation to carry out the repairs and the petitioner has not raised any objection to the fact that the facility sought for by the parents were not provided by the Corporation. Therefore, the contention of the petitioner that shifting of the school has infringed the fundamental rights of the children of school No.20, cannot be accepted.

9. The other contention urged by the petitioner's counsel is that after shifting the children from School No.20, the Corporation is going to have an international school and for that purpose, the Corporation is parting with valuable property, viz., the building and appurtenant land for a paltry yearly rent of Rs.101/- and this, according to the petitioner, is illegal and against the provisions of the Bombay Provincial Municipal Corporations Act. The petitioner has not challenged the starting of the international school by the Municipal Corporation. The petitioner has only incidentally challenged the handing over of the Corporation's property to the 4th respondent. According to the respondent-Corporation, the property and building are not being given to any private individual and it is given to a Trust, which is predominantly governed and managed by the Corporation itself. The challenge of the petitioner against the handing over of the property to the trust is based on the proviso to Section 79(d) of the Bombay Provincial Municipal Corporation Act. Section 79 deals with the disposal of property by the Corporation. It is clear that the Corporation can dispose of property only in accordance with the procedure laid down under Section 79. Section 79(c) authorises the Corporation to lease, sell, let out on hire or otherwise convey any property, movable or immovable, belonging to the Corporation. Clause (d) of Section 79 says that the consideration for which any immovable property or any right belonging to the Corporation may be sold, leased or otherwise transferred shall not be less than the current market value of such premium, rent or other consideration. Proviso to this clause says that provided that any such sale, lease or transfer to a member of a Scheduled Caste, Scheduled Tribe or any other backward class specified as such class in an order of the President under clause (3) of Article 338 of the Constitution or any such sale, lease or transfer to a public charitable trust for the purpose of construction or maintenance of a public hospital may be effected, with the prior sanction of the State Government, for a consideration less than such market value to such extent as the State Government may approve. Based on the above law, it is contended that if at all the Corporation can give any property to any Charitable Trust, it can only be for the purpose of construction or maintenance of public hospital and not for any other purpose, but, in the instant case, the contention of the Corporation is that the Municipal property is no...

paragraph 8 of the affidavit sworn to by the Deputy

Municipal Commissioner for and on behalf of the 1st respondent, it is stated as follows :-

"... in pursuance to the resolution mentioned hereinabove the trust in the name and style of International Education & Research Foundation was registered by the Commissioner of the Ahmedabad Municipal Corporation on September 29, 1997. It is submitted that the office of the trust is at the office of the Municipal Corporation, Sardar Patel Bhavan, Ahmedabad. It is submitted that thus, after deliberation and discussion at all levels, a trust in the name and style of International Education & Research Foundation was created by Ahmedabad Municipal Corporation and it has been decided to establish an international school by creating the said trust in the name of the Mahatma Gandhi International School...."

10. From the above statement, we do not think that for starting school, the Corporation is handing over the possession of the property to any private individual. The lease deed produced as Annexure 'D' is executed between the Ahmedabad Municipal Corporation and the International Education and Research Foundation and not Ideal Foundation, the 4th respondent herein. If International Education and Research Foundation is a Trust, constituted pursuant to the Resolution passed by the Corporation, it cannot be said that it is a Private Trust. From the documents produced in this proceedings, it is difficult to make out that the Corporation has parted with the valuable property in favour of any private organisation.

11. The counsel for the petitioner vehemently contended that the concept of starting an International school itself is against the interest of the common people and that the same would only cater to the needs of the affluent section of the Society. It is also alleged that the commercialisation of the education has been deprecated in Unnikrishnan's case (1993) 1 SCC 645, (supra) and the Corporation is, by starting the international school, going to levy exorbitant fees on the students and that the children from the poorer sections would not be in a position to join the school. It is submitted by the counsel for the Corporation that 20% of the seats are reserved for the students from the municipal school and every efforts will be made to cater

to the needs of all sections of the community. As the starting of the international school as such is not challenged in the Special Civil Application, we do not propose to say anything in this matter, especially when it is a policy matter of the Municipal School Board.

12. For the above reasons, we hold that the petitioner is not entitled to any of the reliefs prayed for in the Special Civil Application. However, we make it clear that in School No.4, all facilities shall be provided for the children and the teachers.

Special Criminal Application No.491 of 1998 :-

13. This petition is filed, seeking Police protection for the Mahatma Gandhi International School. The petitioners claim to be industrialists and businessmen. It is for the School Authorities to approach the Court for the protection, if any, needed by them. We do not think that the petitioners herein have got any locus standi to file this petition. This petition is dismissed. Notice is discharged. Ad interim relief is vacated.

Civil Application No.9654 of 1998 :-

14. This Civil Application is an impleading application. The said application is rejected.

Civil Application No.5781 of 1998 :-

15. This is also an Application, seeking Police Protection. As the prayers sought for in this Civil Application is beyond the scope of the Special Civil Application, the same is also dismissed.

(apj)

The status quo order granted by this Court on 12.6.1998 will continue till 30.11.1998.

11.11.1998 (K.G. Balakrishnan, C.J.)

(M.H. Kadri, J.)

(apj)